

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/07/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-005875

FILED: _____

CHAD ELLIOTT MARKS

TRACY S MOREHOUSE

v.

SOUTHWEST LAWN SPRINKLING
SPECIALISTS, et al.

SOUTHWEST LAWN SPRINKLING
SPECIALISTS
6433 E THOMAS RD
SCOTTSDALE AZ 85251-6005

MONTGOMERY LEE
REMAND DESK CV-CCC
RAYMOND FERENTHEIL
5007 W KRALL STREET
GLENDALE AZ 85301
REGISTRAR OF CONTRACTORS
800 W WASHINGTON
6TH FLOOR
PHOENIX AZ 85007

MINUTE ENTRY

This Court has jurisdiction of this Administrative Review Action pursuant to A.R.S. Section 12-901 et seq. This Court has reviewed the record of the proceedings from the Registrar of Contractors and the memoranda submitted.

The only issue presented for review is Appellant's contention that the administrative law judge and Registrar of Contractors erred in its determination that Appellant owed \$1,000.00 to Appellees. The administrative law judge concluded after a hearing that there was "no competent evidence that the complainant (Appellee Southwest Lawn Sprinkling Specialists) was not

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entitled to the full amount of \$2,400.00 (less the \$1,400.00 already paid to Appellee)...¹ The administrative law judge ordered Appellant to pay \$1,000.00 to Appellee to avoid suspension of his contractor's license.

Appellant asserts that the administrative law judge erred as a matter of law in failing to consider that an accord and satisfaction had occurred. The issue whether an accord and satisfaction has occurred is a question of fact. This Court must view all of the evidence in a light most favorable to sustaining the judgment of the administrative agency. Where a conflict in the evidence exists, the reviewing court must resolve those conflicts in favor of sustaining the judgment. The hearing officer or administrative law judge is in a better position to assess witnesses' credibility, and a reviewing court must afford great weight to the assessment of credibility issues.² When the sufficiency of the evidence to support the legal conclusion or judgment is questioned, a reviewing court will examine the record only to determine whether substantial evidence exists.³

In this case exhibit #5 was a copy of the check dated June 11, 2001 in the amount of \$1,400.00 from Appellant to Appellee. Written on the face of the check was "final payment... ." Of particular note is the fact that the words written on the check and on the back of the check do not say payment in full. The term final payment is subject to interpretation, and this Court cannot say that the administrative law judge erred in concluding that the imprecise terms utilized by the Appellant failed to prove an accord and satisfaction.

Finding no error,

IT IS ORDERED affirming the judgment and order of the Registrar of Contractors.

IT IS FURTHER ORDERED remanding this matter back to the Registrar of Contractors for all further and future proceedings in this case.

IT IS ORDERED denying Appellant's request for attorney's fees and costs in this matter.

¹ Recommended decision of administrative law judge, dated November 27, 2001, document 16, record of administrative hearing.

² See In Re: Estate of Shumway, 197 Ariz. 57, 3P.3d 977, review granted in part, opinion vacated in part, 9P.3d 1062.

³ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998).